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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,017	08/31/2001	Vivek John Tiwary	SP 001	1641

7590 10/04/2005

Gary Kaplan
1 Irving Place, P7H
New York, NY 10003

EXAMINER

BEKERMANN, MICHAEL

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/945,017

Applicant(s)

TIWARY ET AL.

Examiner

Michael Bekerman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213..

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the writing in Figure 2 is completely illegible. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: The first line of the specification lists the date on provisional application 60/229,283 as August 31, 2001. This is wrong, and needs to be changed to August 31, 2000.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. Claims 1-9, 11, and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos (U.S. Patent No. 6,029,141) in view of Koppelman (U.S. Patent No. 6,662,164).

Regarding claims 1, 8, and 9, Bezos teaches a website that is configured to sell products; said website rewarding other affiliate websites for referring customers to said products (Abstract, Sentence 1). It would be obvious that the supplier can act as an

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affiliate. This would provide the supplier with more revenue. Bezos doesn't teach competition for a commission. Koppelman teaches a commission based system using quotas (Column 7, Lines 13-20), said quotas being implemented over a specified time period (Column 11, Lines 33-35), and using the quota to monitor the top seller (Column 12, Lines 51-52). It would have been obvious to one having ordinary skill in the art at the time the invention was made to reward the top affiliates in Bezos' system. This would allow for competition between affiliates, which would lead to more referrals and more sales.

Regarding claim 2, Bezos teaches a merchant site including registration software (Column 1, Line 57), a product database (Column 7, Line 42), a web server (software running on a website) (Column 1, Lines 55-56), an inventory tracking system (by processing orders, inventory is tracked) (Column 6, Line 17), and an e-commerce system (Column 1, Line 51).

Regarding claims 3 and 11, Bezos doesn't teach under which competitive criteria a commission should be awarded. Koppelman teaches a quota as tracking any number of performance measures, including sales volume (Column 7, Lines 13-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include competitive criteria in the system of Bezos. This would give suppliers (affiliates) greater specification to how the commission could be won.

Regarding claims 4 and 13, neither Bezos nor Koppelman specify second and third place awards. Official notice is taken that it is well known to give consolation prizes to competitors that don't place first in a competition, but place highly nonetheless.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to give second and third place prizes to suppliers. This would ensure that there isn't only one winner, and more suppliers walk away happy.

Regarding claims 5-7 and 14-16, Bezos doesn't talk about suppliers (affiliates) being grouped into tiers. Koppelman teaches a level as being a range or goal (restriction for participation) that the affiliate must attain in order to earn a specific commission (Column 13, Lines 63-65). Koppelman also teaches these restrictions for participation as referring to both cumulative sales in dollars and cumulative sales in number of units (Column 14, Lines 19-21). It would have been obvious to one having ordinary skill in the art at the time the invention was made to group participants into tiers. This would allow for more than one first place winner.

Regarding claims 17 and 18, Bezos teaches a website that offers one or more items for sale through electronic purchase; said website rewarding other affiliate websites for referring customers to said items (Abstract, Sentence 1). It would be obvious that the supplier can act as an affiliate. This would provide the supplier with more revenue. Bezos doesn't teach competition for a commission. Koppelman teaches the tracking of purchases to determine which affiliate (supplier) has sold the greatest quantity or revenue and awarding commission based on said determination. (Column 7, Lines 13-20 and Column 12, Lines 51 and 52). It would have been obvious to one having ordinary skill in the art at the time the invention was made to reward the top affiliates in Bezos' system. This would allow for competition between affiliates, which would lead to more referrals and more sales.

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4. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos (U.S. Patent No. 6,029,141) in view of Koppelman (U.S. Patent No. 6,662,164), and in further view of Bomze (U.S. Pub No. 2003/0181201).

Regarding claim 10, neither Bezos nor Koppelman teach the use of a wireless device to purchase products. Bomze teaches a mobile device for electronic commerce; said device is adapted to receive text and graphics from a wireless network. It would have been obvious to one having ordinary skill in the art at the time the invention was made to allow wireless devices to make purchases from the website. This would allow more purchases to be made and more revenue to be generated. Claim 12 can be rejected using the same teaching as claims 3 and 11.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos (U.S. Patent No. 6,029,141) in view of Koppelman (U.S. Patent No. 6,662,164), and in further view of Lipin (U.S. Pub. No. 2004/0225558).

Regarding claim 19, neither Bezos nor Koppelman teach associating with middle-men who promote the merchant site for the affiliate (supplier). Lipin teaches the use of sub-affiliates, who work to gain commissions for the affiliate by linking to the merchant site (Paragraph 0033, Sentence 5 and Paragraph 0034, Sentences 1-2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include sub-affiliate middle-men into the systems of Bezos and Koppelman. This would allow a greater chance for each supplier (affiliate) to achieve the first place commission.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art with respect to referral incentive award programs:

U.S. Patent No. 5,537,314 to Kanter

U.S. Pub. No. 2002/0046091 to Mooers

U.S. Pub. No. 2002/0029290 to Burema

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bekerman whose telephone number is (571) 272-3256. The examiner can normally be reached on Monday - Friday, 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MB

A handwritten signature in black ink, appearing to read 'JDC', is positioned above the printed name.

JEFFREY D. CARLSON
PRIMARY EXAMINER